REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested in view of the discussion presented herein.

1. Information Disclosure Statement.

The Office Action indicates that one of the elements of non-patent literature was not considered because the IDS filed January 6, 2009, failed to comply with 37 CFR 1.98(a)(2). Specifically, it is claimed that the foreign document was not submitted to the USPTO.

However, Applicant electronically submitted the non-patent literature with the IDS on January 6, 2009, as shown by the appended copy of the acknowledgment receipt (Exhibit A). Although the document, shown on the receipt as "Cheng_reference" was mis-indexed by Applicant as a "Foreign Reference", the document appears on PAIR as an "NPL documents" and is legible and accessible. It is respectfully requested that the Examiner consider the document.

2. Discussing Response to Arguments.

In the section entitled *"Response to Arguments"*, the Examiner discusses a number of the Applicant's arguments in the prior Office Action response which were directed to the Lamkin reference as an anticipatory reference. Applicant herein discusses the points of this Examiner response.

In support of Paragraph [0069] of Lamkin (publ. app. 2006/0159109), page 13, first paragraph, of Lamkin provisional 60/531,565 is cited in support of *"receiving new content within a request submitted by a user"*, as recited in Applicant claims. This section of Lamkin discusses *"a search engine is provided that searches for entities and collections located within different trust levels ...and metadata associated with the entity."*

The cited section indicates just the opposite of what it is purported to teach. Specifically, the section of the Lamkin provisional explicitly asserts that the user *"searches for entities and collections"* (in which entities are records containing content); it does NOT teach that the user supplies this content. This is not surprising as the *"trust levels"* taught by Lamkin are associated with the user making payments for obtaining content, as seen by page 59, lines 19-23, of the same Lamkin provisional application: *"Create a services model for a trusted entity. This trusted entity could charge customers for entities. This allows for a user billing model for paying for content. This could be on a per use basis, a purchase for unlimited usages etc"* (emphasis added). In defining services for Entities and Collections, the same provisional, on page 94, lines 4-6, states: *"1. Collection Name Service & Entity Name Service - creating a hierarchical structure across the WAN allowing for distributed searches, acquisition & management"* (emphasis added). The entities and collections are clearly shown to be records within a hierarchical database structure whose records can be searched within Lamkin.

Furthermore, it should be recognized that <u>to perform the search in the database of Lamkin the content must, by necessity, already exist and have a record associated with it</u>. The third element of Applicant's Claim 1 recites *"creating a new content record corresponding to said new content"*. Applicant has copied this limitation into the first element of the amended claim to prevent interpretation of the first element without proper consideration of the context of the remaining elements of Claim 1, and recites *"new content, for which no record exists, associated with a request submitted by a user."* Consequently, the teachings cited in Lamkin do not comport with that which is recited in Applicant's Claim 1, as seen above.

The rejection also cites another section of Lamkin, which recites

> *There may be various types of <u>entities</u> within a collection and the content manager determines which version <u>to playback</u> based on rules and criteria. The rules or criteria can include: a Rating (e.g., G, PG, PG-13, R), a display device format (e.g., 16:9, 320x240 screen size), bit rates for*

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Off. Act. Dated: 02/13/2009

> *transferring streaming content, and input devices available (e.g, it does*
> *not make sense to show interactive content that requires a mouse when*
> *only a TV remote control is available to the user). The content manager*
> *provides graceful degradation of the entities and the playback of the*
> *collection. The <u>content manager uses the collection name service module</u>*
> *<u>to request new content for playback</u>. The content manager coordinates all*
> *of the rules and search criteria used to find new content.*

However, as described above, the *"entities"* are records of content contained on the system database, and not content being supplied by the user. Again, why would the user supply the content that he/she is requesting? It would make no sense whatsoever. All of the words in a claim element must be considered in positing a rejection. The fact that Lamkin contains the phrase *"new content"* does not, in itself, provide teachings that support the rejection. Applicant is not seeking to protect any system which somehow uses "new content", but a specific methodology as specified in the claims.

Also, page 58, first paragraph, of the same Lamkin provisional is cited, which similarly describes a *"content search engine"* and a *"content acquisition manager"* that operates on behalf of a user *"to acquire new content collections and the associated access rights for those collections."* This section does not support *"receiving new content",...."submitted by a user"* as is recited by Applicant's Claim 1.

Accordingly, Lamkin does not teach receiving the new content from the user, but instead performs a search on behalf of the user for obtaining rights to content that is not currently in the collection. Additionally, the *"new content"* of the user is so named in the Lamkin reference because it is new to the collection managed by the system. Thus, it is readily seen that the Lamkin reference does not support that which it is being relied upon to support in the following obviousness rejections.

3.   <u>Rejection of Claims 1-10 and 17-28 under 35 U.S.C. § 103(a).</u>

Claims 1-10 and 17-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lamkin (U.S. Publ. No. 2006/0159109) in view of Lissar (U.S. Pat. No. 7,225,197).

After carefully considering the grounds for rejection, the Applicant responds as follows.

(a) <u>Claims 1, 10, 17, and 24-28</u>.

Claims 1, 10, 17, and 24-28 are the independent claims within the above group of claims. In support of the rejection, it is the combination of Lamkin and Lissar is asserted as teaching all aspects of these claims in the instant application.

Before proceeding, Applicant again objects that the examination of the claim centers only on the broadest independent claim (Claim 1), while not considering the additional limitations found in the other independent claims. Each limitation in the claims is equally entitled to full consideration.

In response to the rejection, Applicant asserts that the cited references, either separately or in combination with one another and what is known in the art, do not support all the limitations of even the broadest claims and certainly not of the more narrow independent claims. Thus, a number of intractable shortcomings are present in this combination of references as will be discussed below.

Lamkin Reference

In the above section, "*Discussing Response to Arguments*", the use of the Lamkin reference for supporting the rejection has been discussed. It has is noted that the relied-upon portions of Lamkin provisional application 60/531,565 do not comport with that which is recited in Applicant claims. In particular, Lamkin does not teach the system "*receiving new content*" ..."*within a request submitted by a user.*" Additionally, the content searched by Lamkin is that content already on the system for which a record already exists, or a search for other content collections that can be added to the collection; however, neither of these are submitted by the user and thus, are clearly distinct from that recited by Applicant claims.

Sections of the later-filed Lamkin published application 2006/0159109 are still cited in the present Office Action in support of the rejection. <u>However, it has already been established that the Lamkin application, which was published as 2006/0159109,</u>

was filed **after the filing date of the present invention** and it **is immaterial** with regard to any content contained within the later filed application, unless it is shown that the content is also found in the earlier filed material, such as in provisional application serial number 60/531,565. All support for the rejection MUST be supported from prior art applications, whether they be provisional applications or regular applications which precede the date of filing Applicant's application. As noted previously, the published (2006/0159109) Lamkin application (U.S. Serial No. 11/303,507) was filed December 16, 2005, which is almost two years (21 months) after the filing date of the instant application, which is February 4, 2004. Thus, this specific reference is not prior art. This later-filed material is of no consequence unless the Examiner shows that these teachings are specifically supported by the earlier application as Examiner provided in the prior *"Response to Arguments"* section.

The rejection attempts to assert that *"Lamkin does teach the identification of related/similar content and comparing that content with new content (see [0091] and [0104])"*, however, this is cited from the later filed Lamkin application and has no bearing, unless it is supported by text from the Lamkin provisional that was filed prior to the present invention. In addition, it is apparent that the line of reasoning is directed toward asserting a gist or thrust of the claimed teachings without considering the specific text of the claims and the cooperation of the elements as recited in Applicant's claims.

In support of the rejection, the Examiner also conjectures, on the basis of the later filed Lamkin reference, that *"Since there is a comparing and completing of records that need to be made, there is a need to have new content without an existing record is compared with existing content having a corresponding record, and if the new content is at least similar to existing content, then the records from the existing content are utilized in completing the fields of the new content."* Applicant respectfully asserts that this unwarranted speculation is not supported, and frankly cannot be supported, because the conclusion does not logically follow the premise. Applicant agrees that Lamkin must

deal with some form of new content; many systems do. However, it is not in the manner described by the Applicant's claims. Nothing is cited from the prior art Lamkin teachings about *"comparing and completing records"*; in fact, a search of the Lamkin PPA shows there is nothing describing these aspects comparing of records in this manner. Furthermore, a *"comparison of records"* does not equate to filling out a new record from material from the pre-existing records. Data about the content typically accompanies the content of a new record, in particular regarding the movie content discussed by Lamkin. Thus, support for these aspects is not shown in the earlier Lamkin provisional, and the Examiner's speculations have no bearing and do not logically follow.

EVEN IF the later Lamkin reference (2006/0159109) were admissible, it would still not provide the necessary teachings it is being relied upon to supply. In support of the rejection for the above, the rejection directs attention to paragraph [0140] of Lamkin for automatic completion of new records from the user, as follows:

> *[0140] Similarly, in step 954, the process <u>determines whether the statuses of copies of the content are to be changed</u>. When the status is to be changed, step 956 is entered <u>where the status is changed to appropriate copies of the content</u>. In step 960 the process determines whether content has been changed or updated. When the content has been changed, step 962 is entered where it is determined whether to change or update copies on the network. When content on the network is to be updated or changed, step 964 is entered and appropriate content is updated or changed. This determination can include comparing the changed content to a base content or content on the network, identifying changes and implementing similar changes over the network.*

The only thing supported by paragraph [0140] is that the status of different content can be changed. No specifics are provided about any means of *"automatically completing fields within said new content record"*, and more specifically, as the claim continues, of *"based on information contained in the specific content as well as information about the presence of duplicate or related content which is available across the multiple devices."* AGAIN, it must be stressed that paragraph [0140] is from the <u>later Lamkin application</u> and is not even admissible against the claims of the instant application, unless the Examiner can provide support from applications filed before the

present application.

It is clear from the discussion above that teachings from Lamkin provisional application serial number 60/531,565 do not provide support for that which the Lamkin reference is relied upon. The Examiner continues to rely on teachings from the later filed Lamkin reference, which is not relevant to the instant application because it was filed at a later date.

Lissar Reference

The combination with Lissar is cited due to admitted shortcomings of even the later-filed Lamkin application, regarding automatically completing field within the new record from information contained in the specific content as well as information about the presence of duplicate or related content. Before proceeding, Applicant again points out that admissible Lamkin teachings HAVE NOT been shown to teach every aspect of Applicant's claims aside from automatic completion aspects. The rejection based on the combination has already been traversed; however, the following examines the Lissar reference to show that it also does not support that for which it is relied upon..

In support of the rejection of these claims relating to "*automatically completing fields*" in response to "*reviewing specific content within said new content*" and "*based on information contained in the specific content as well as information about the presence of duplicate or related content which is available across the multiple devices*" when "*creating a new content record*" for the new content "*within a request submitted by a user*", the Examiner asserts a combination with the Lissar reference.

Before moving on to the specifics, it should be recognized that Applicant's claims recite NUMEROUS cooperative elements about "*automatic completion*", which is why the Applicant recites the "*automatic completing fields*" in the manner above with a number of the necessary relationships shown in the claims. Applicant is not seeking to patent all manner of invention which includes any form of "record completion", but a specific method as recited in the claims, including the cooperation of the many claim elements. The rejection, however, fails to consider Applicant's invention as a whole and

tries to consider piecemeal "concepts" and compare these against the cited references.

Moving into the specifics of the Lissar reference, it is asserted that Lissar supports "*automatically completing fields*" and two sections from Lissar are cited. There is no discussion about these sections of the Lissar reference or how they supposedly teach all the necessary aspects relating to completing the fields as recited in Applicant's claims. This again appears to be an attempt to dissect the teachings of the invention down to a gist or thrust, which is contrary to MPEP directives.

The following are the sections put forth from the Lissar reference.

Lissar column 3, lines 56-67 is duplicated as follows:

> *FIG. 3B illustrates table diagrams of another data model according to an embodiment of the present invention.*
> *FIG. 4 is a functional block diagram of software processes according to an embodiment of the present invention.*
> *FIG. 5 illustrates table diagrams for electronic parts according to an embodiment of the invention.*
> *FIG. 6 is a flow chart of a pre-comparing process for the relations shown in FIG. 5 according to an embodiment of the present invention.*
> *FIG. 7 is a flow chart illustrating operation flow of a database transformation application according to an embodiment of the present invention.*

Applicant is unable to see how the above has any bearing on the automatic completion of the fields as discussed in Applicant's claims.

Additionally, the rejection puts forth column 10, lines 14-28, of Lissar, which reads:

> "*The data entry process 500 pre-compares, during data entry of fields in a record, for example, by a user and/or a process, data of other fields and/or records in database 510 to automatically provide data input suggestions (i.e., filling or completing) for fields of the record being entered or automatically filling the fields of the record being entered. In particular, the data entry process 500, while entering data into a field of a record of the database 510, performs a pre-comparing process by searching the database 510 for fields similar to or associated with the entered field. Based upon the pre-comparing process, the data entry process 500 can either fill other fields of the current active record being entered with the*

similar data and/or offer the similar data as a starting point to fill the other fields of the current active record being entered.

The above recites a "*data entry process*" and does not relate to "*receiving new content for which no record exists, associated with a request submitted by a user.*" In performing this data entry process, the record is already created and the data entry person is filling in the fields of the record. Applicant's claims (e.g., Claim 1) also recite "*new content without an existing record is compared with existing content having a corresponding record*", while Lissar teaches a mechanism for filling a field within a record.

Applicant's claims recite that the "*new content without an existing record is compared with existing content having a corresponding record*", so it is the content portion being compared <u>and not the fields within a record associated with a piece of content</u> as in Lissar. The Lissar reference points to the record itself as the content, however, this does not comport with the recitations of Applicant's claim, such as Claim 1.

In addition, nothing is cited in relation to either the Lamkin or Lissar reference regarding using information from related content which is "*available across the multiple devices*", as recited in Applicant's claim.

Furthermore, no teachings are cited from Lissar about the related claim element of "*updating the records of duplicate or related content with information about the specific content associated with said new content record to synchronize all the content records*".

Consequently, the teachings of Lissar do not support the manner of automatically completing fields as taught within the claims of the instant application.

Shortcomings of the Combination

As shown above, not all aspects of Applicant claims are taught whether considering the references singly, or in combination with one another and what is known in the art.

2143.03 All Claim Limitations Must Be Taught or Suggested
"All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Because Applicant's claim limitations include the interoperation (cooperation) of the claim elements, this must also be taken into account in the rejection. The relied-upon references do not process the new content as recited in Applicant's claims, which is shown hereinabove.

To support obviousness, *"there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness"*, as stated the recent KSR decision, and this requirement cautions that *"rejections on obviousness cannot be sustained by mere conclusory statements."* However, the current rejection is based only on concepts and not on the specific limitations recited in Applicant's claims.

MPEP 2143.01

VI. THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

As discussed previously, Lamkin is directed to allowing the user to search and find media content, which differs from the process of receiving the new content submitted by a user that is required by Applicant's Claim 1 and others. Lissar teaches filling out forms during data entry and is not directed to similar aspects as Lamkin.

As provided in M.P.E.P. § 2142, the Supreme Court, in KSR International Co. v. Teleflex Inc. 82 USPQ2d 1385, 1396 (2007), specified that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. *"[R]ejections on obviousness*

cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). Furthermore, the Examiner must make *"explicit"* this rationale of *"the apparent reason to combine the known elements in the fashion claimed,"* including a detailed explanation of *"the effects or demands known to the design community or present in the marketplace"* and *"the background knowledge possessed by a person having ordinary skill in the art"* (KSR, page 14).

In support of the 103(a) rejection, the Office Action provides no support for why one would receive an element of new content submitted from the user when attempting to search for content within the database for the user. In addition, the principal reference is silent on creating a new content record and comparing the new content with duplicate or related content for which a record exists across multiple devices and completing the new content record based on that information. Lissar is directed to different objects, specifically data entry, in which fields in an already created record are being filled in by a data entry person who is given a choice of field entries or can change what has been automatically filled in based on values for that field in other records, and not on the new content itself. The value of receiving and comparing the new content is only recognized in the context of the instant application and the claims directed thereto. Merely asserting that a benefit of the modification exists, as in the rejection, does not provide the *"articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness,"* required under KSR. By definition, every patentable invention must be *"beneficial"* – and arguendo every invention contemplates at least some new benefit(s) in arriving at the invention – certainly, this does not render the benefit obvious or expected. No supporting documentation has been put forth for the rationale.

Because every modification or element has a corresponding use or benefit, the above reasoning could be applied to any improvement. It appears, therefore, that

"*hindsight construction*" may have played a leading role in arriving at the present ground for rejection in the Office Action – which, though difficult perhaps to avoid in many cases, is nonetheless impermissible in making a prima facie showing of obviousness.

According to M.P.E.P. 2142, "*the examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.*" Because a prima facie conclusion of obviousness has not been provided in the present Office Action, Applicants respectfully request reconsideration and withdrawal of this ground for rejection as to Claim 1, and to any additional remaining claims to the extent they may depend therefrom.

The additional independent claims, specifically, Claims 10, 17, and 24-28 recite similar automatic field completion aspects to those in Claim 1, and thus should also be found patentable in view of the discussion of patentability relating to Claim 1. However, these claims span a scope of additional limitations that have not been considered in the Office Action because it is directed at the material of independent Claim 1. Applicant draws attention, for example, to Claim 26, which recites a server of a client-server configuration, and programming which performs numerous aspects including "*storing a preference setting for one or more types of requests*", "*updating content record fields associated with existing content*", and "*transmitting a confirmation for the request based on the preference setting.*" Claim 27 recites a client apparatus in a client-server configuration having similar additional limitations as Claim 26, and amended to recite the content analyzing as "*analyzing an image in the new content*". Claims 24-25 and 28 have similar aspects which are not recited in Claim 1 of the Applicant. Each of these claims should be considered on its own merits. Numerous aspects recited in these claims have not been addressed in this action or the preceding office actions.

Therefore, the Applicant respectfully asserts that Lamkin and Lissar, considered either separately or in combination with one another and what is known in the art, does not teach all aspects recited in Applicant's claims. Applicant respectfully requests that

the rejection of Claims 1, 10, 17, and 24-28, and the claims that depend therefrom, be withdrawn, and the instant application allowed to issue.

(b) <u>Claims 2-9 and 18-23</u>. Claims 2-9 and 18-23 depend from independent parent claims whose patentability has been elucidated above; these claims should be considered *a fortiori* allowable. In addition, a number of these claims recite elements having additional patentable distinctions over the cited references, which appear rejected on the basis of undue generalizations of claim elements with regard to a view of the cited Lamkin reference.

Therefore, Applicant respectfully requests that the rejection of Claims 2-9 and 18-23 be withdrawn and the instant application allowed to issue.

4.   <u>Amendment of Claims 1-5, 7-10, 17-19, and 21-28</u>.

<u>Claim 1</u>.   Independent Claim 1 has been amended to restate aspects already found in the claim but not fully considered. In particular, new content is received "*for which no record exists*", which was already stated in a later claim element in view of the record being created for the content. The content compared with it has an existing record. These minor changes are supported in the claims and found throughout the application including page 14, lines 8, and 13-17.

<u>Claims 2-3, 5, 7-9, 19, and 21-23</u>. Dependent Claims 2-3, 5, 7-9, 19, and 21-23 have been amended to provide proper antecedent basis with the amended independent claims. Dependent Claim 9 replaces the informal "*asks*" with the phrasing "*is sought from*", as used in the specification on page 18, line 15.

<u>Claim 4</u>.   Dependent Claim 4 has been amended to include material from original Claim 2, so that it now depends from base Claim 1. In addition, the option offered is "*based on resolution of the content*", as described in the specification, including page 13, line 10, through page 14, line 7.

Claim 6.   Dependent Claim 6 has been amended to amend "*field for related content*" to reduce possibility of misinterpretation.   The phrase now reads "*a field for indicating other content related to content associated with the content record*", which paraphrases the specification as found on page 12, lines 8-9.

Claims 10, 17, and 24-28.   The additional independent claims have been amended to recite aspects of the new content submitted by the user (as in Claim 1 and found on page 10, line 5, of the specification), creation of the new content record and automatic completion of new content record fields as recited in Claim 1.   In addition, Claim 27 additionally recites "analyzing an image in the new content to find images of duplicate or related content", which was recited in the specification, including page 14, lines 21-23.

Claim 18.   Dependent Claim 18 has been amended to additionally recite the operation of "*comparing an image of the new content with images contained in the existing content*", which is recited in the specification on page 14, lines 21-23.

5.   Amendments Made Without Prejudice or Estoppel.

Notwithstanding the amendments made and accompanying traversing remarks provided above, Applicant has made these amendments in order to recite the material with increased particularity.   These amendments have been made without any prejudice, waiver, or estoppel, and without forfeiture or dedication to the public, with respect to the original subject matter of the claims as originally filed or in their form immediately preceding these amendments.   Applicant reserves the right to pursue the original scope of these claims in the future, such as through continuation practice, for example.

6.   Conclusion.

Based on the foregoing, the Applicant respectfully requests that the various grounds for rejection in the Office Action be withdrawn and that a Notice of Allowance

be issued for Claims 1-10 and 17-28.

In the event any further matters remain at issue with respect to the present application, Applicant respectfully requests that the Examiner please contact the undersigned below at the telephone number indicated in order to discuss such matter prior to the next action on the merits of this application.

Date: ___May 11, 2009___   Respectfully submitted,

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Attachment

Acknowledgement Receipt

The USPTO has received your submission at **19:09:51** Eastern Time on **06-JAN-2009** .

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eFiled Application Information

EFS ID	4565872
Application Number	10771805
Confirmation Number	3337
Title	Methods and apparatuses for synchronizing and tracking content
First Named Inventor	Clay Fisher
Customer Number or Correspondence Address	36813
Filed By	M. Robyn Carrillo
Attorney Docket Number	SON5180.84A
Filing Date	04-FEB-2004
Receipt Date	06-JAN-2009
Application Type	Utility under 35 USC 111 (a)

Application Details

Submitted Files	Page Count	Document Description	File Size	Warnings
SONY_84A_IDS_letter_010609.pdf	2	Information Disclosure Statement Letter	81887 bytes	◆ PASS
SONY_84A_IDS_010609.pdf	4	Information Disclosure Statement (IDS) Filed (SB/08)	607906 bytes	△ WARNINGS

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Submitted Files	Page Count	Document Description	File Size	Warnings
Cheng_reference.pdf	5	Foreign Reference	350632 bytes	◆ PASS

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If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

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New International Application Filed with the USPTO as a Receiving Office

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